

February 24, 2003

To: Supervisor Yvonne Brathwaite Burke, Chair
Supervisor Gloria Molina
Supervisor Zev Yaroslavsky
Supervisor Don Knabe
Supervisor Michael D. Antonovich

From: David E. Janssen
Chief Administrative Officer

MOTION TO SUPPORT SB 1 (SPEIER), PROHIBITING FINANCIAL INSTITUTIONS FROM SHARING OR SELLING PERSONAL INFORMATION WITHOUT THE CONSUMER'S CONSENT (ITEM NO. 15A, AGENDA OF FEBRUARY 25, 2003)

Item No. 15A on the February 25, 2003 Agenda is a motion by Supervisor Antonovich that the Board support SB 1 (Speier), which would prohibit banks, insurance companies and other financial businesses from providing personal information about customers to telemarketers and other third parties, and send a five signature letter to the Governor and State Legislature urging support of this legislation.

The bill would provide privacy protection to consumers by prohibiting, with certain exceptions, financial institutions from disclosing "nonpublic personal information" to any nonaffiliated third party. The bill defines "nonpublic personal information" as "personally identifiable financial information" which: 1) a consumer provides to obtain a product or service; 2) is about a consumer resulting from any transaction between the institution and the consumer involving a product or service; or, 3) the financial institution otherwise obtains about a consumer in connection with providing a product or service to the consumer. The bill also provides for privacy notices and consent forms, giving consumers an opportunity to exercise the choice not to have personal information released. In addition, the bill preempts all local privacy ordinances, and it establishes penalties of up to \$2,500 per occurrence, with a \$500,000 cap on aggregate penalties, for knowing or willful violation of the bill's provisions.

The bill provides a variety of exceptions such as allowing: 1) the sharing of personal information where there is an existing joint marketing agreement between financial institutions; 2) the release of information where it is necessary for an institution to initiate, administer, or enforce a financial transaction for the consumer; 3) the release of information with the consumer's consent; or, the release of information to avoid fraud and/or identity theft.

Opponents of the bill, including a number of associations of banks and insurance companies, claim that: 1) its compliance costs will be substantial; 2) it will create enforcement and liability problems; 3) its exceptions are too restrictive, and it would be better to make specific prohibitions; 4) it will give an unfair business advantage to institutions based simply on their organizational structure; 5) it is ambiguous concerning the possible inclusion of certain kinds of businesses; and, 6) its provisions are preempted by Federal law.

Supporters of the bill, including the American Civil Liberties Union, labor union federations, consumer advocacy groups, senior citizen groups, and the County of Santa Clara, respond that the opponents are overstating costs and potential problems, and that the real loss will be in profits from marketing opportunities that come at the expense of consumer privacy. They also point out that the detailed list of exceptions was added to accommodate the opponents.

A related bill, SB 27 (Figueroa), is also pending. It would require disclosure of information shared or sold, upon request. In recent years, four bills with provisions similar to SB 1 have failed to be adopted. SB 773, which was introduced in 2001, failed to pass Senate concurrence last year, after it was amended in the Assembly. AB 2347 (Goldberg) was also introduced in 2001, but it failed to pass the Assembly. In 1999, SB 1337 (Speier), did not pass out of the Senate Finance, Investment and International Trade Committee.

On February 18, 2003, SB 1 was passed by the Senate Judiciary Committee on a 5 to 2 vote, and it is scheduled for hearing by the Senate Appropriations Committee on February 24, 2003.

SB 1 preempts all local privacy ordinances. The County has not adopted such an ordinance. On November 27, 2002, the Department of Consumer Affairs responded to a request that the County adopt an ordinance, similar to one adopted by San Mateo County, with provisions like those in SB 1. In the report, Consumer Affairs recommended that the County not adopt an ordinance, but that the Board of Supervisors consider supporting State and Federal legislation that would provide this privacy protection.

Each Supervisor
February 24, 2003
Page 3

There is no Board policy related to this issue. **Therefore, a County position on SB 1 is a matter for Board determination.**

DEJ:GK
MAL:DRS:ib

Attachment

c: Executive Officer, Board of Supervisors
County Counsel
Legislative Strategist